

UNITED STATES TAX COURT
WASHINGTON, DC 20217

RAUL SALVAGNO, INCOMPETENT,)
ALEXANDER SALVAGNO, NEXT FRIEND,)
)
Petitioner,)
)
v.) Docket No. 16800-07.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)
)

ORDER

On January 12, 2010, we granted Alexander Salvagno's motion to be recognized as next friend of petitioner. His motion stated "there is no other person better suited to serve as next friend, for the purpose of conducting the presentation of the Tax Court trial" and assured the Court that he was "familiar with the facts of [his father's] case and principles of law" from having "worked in a law library for nearly five years". Despite his assurances, petitioner's next friend has repeatedly been non-responsive to the Court's Orders, and non-compliant with the Tax Court Rules of Practice and Procedure, as evident from the record of this case.

This case was called from the calendar for the Trial Session of the Court at New York, New York on October 22, 2012. There was no appearance by or on behalf of petitioner. The Court received on October 22, 2012--the day of trial--petitioner's motion for a continuance, which included a request for the appointment of counsel. The Court notes that (1) petitioner was informed of the date of trial by Notice Setting Case For Trial served May 25, 2012, (2) petitioner did not comply with the Court's Standing Pretrial Order dated May 25, 2012, and (3) both petitioner and petitioner's next friend have been repeatedly informed that the Tax Court does not provide counsel for its petitioners. See *Boyd v. Commissioner*, 117 T.C. 127, 132-133 (2001); *Riland v. Commissioner*, 79 T.C. 185, 207 (1982). Further, Rule 133 provides that continuances will be granted only in exceptional circumstances. Respondent expressed opposition to petitioner's motion for continuance. The Court denied petitioner's motion.

During the October 22, 2012 trial session in New York, New York, respondent's counsel filed a Motion to Dismiss for Failure to Properly Prosecute. By Order dated October 22, 2012, petitioner was directed to respond to respondent's motion to dismiss, on or before November 13, 2012. By Order dated November 2, 2012, the time for petitioner's response was extended to November 23, 2012, due to a change in the address of petitioner's next friend. Petitioner's next

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friend did not notify the Court or respondent of his change in address. See Rule 21(b)(4), requiring that the Court be promptly notified of any change in address.

On December 11, 2012, petitioner filed a motion to extend time to respond to respondent's motion to dismiss until January 25, 2013. This motion was granted by Order dated December 18, 2012. Petitioner filed opposition to respondent's motion on January 30, 2013.

The Court has previously denied respondent's two motions to dismiss for failure to properly prosecute to provide petitioner with an opportunity to prosecute his case, either through his next friend or through counsel. Petitioner's next friend was advised in an Order dated September 13, 2011 that "any future disregard of this Court's orders may result in sanctions, including dismissal of this case and entry of decision for the respondent."

The record and the evidentiary materials in this case, which include the deemed admitted admissions and the deemed established Stipulation of Facts and accompanying exhibits, suggest that it would be proper for this Court to enter a decision based on the record before it. Therefore, it is

ORDERED that the parties shall, on or before April 1, 2013, file briefs addressing any remaining issues in this case.

Petitioner is advised that failure to comply with this Order will result in the granting of respondent's Motion to Dismiss for Failure to Properly Prosecute and the entry of a decision in favor of respondent.

**(Signed) Kathleen Kerrigan
Judge**

Dated: Washington, D.C.
February 26, 2013